85-577

No. _____

Supreme Court, U.S.
FILED
SEP 17 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1985

MICHAEL GENE HAAS,

Petitioner,

vs.

CHET WEINER,
THE COUNTY OF REDWOOD,
JERRY LUTTMAN,
LYON COUNTY,
LEON VAN DEN BROEKE,
THE COUNTY OF YELLOW MEDICINE,
PAUL R. MOE,
and
MARTIN ARIMBORGO,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

CERTIFICATE OF SERVICE

Allan Swen Anderson
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Attorney for Petitioner

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QUESTIONS PRESENTED

I. IS AN ALCOHOLIC PRISONER ENTITLED TO THE SAME PROTECTION UNDER THE EIGHTH AMENDMENT AS OTHER PRISONERS?

II. CAN A PRISONER BE REMOVED FROM JAIL IN VIOLATION OF THE TERMS OF HIS INCARCERATION FOR USE AS AN UNDERCOVER AGENT WITHOUT DUE PROCESS?

PARTIES

All parties to the proceeding appealed from are listed in the caption of the case.

TABLE OF CONTENTS

	Page
Questions Presented	1
Parties	2
Table of Contents	3
Table of Authorities	4
Opinions Below	5
Jurisdiction	5
Constitutional Provisions and Statutes	6
Statement of the Case	8
Substantial Nature of the Questions Presented	13
APPENDIX	
Opinion of the United States Court of Appeals for the Eighth Circuit	A-1
Opinion of the District Court	A-8

TABLE OF AUTHORITIES

	Page:
Cases:	
Estelle v. Gamble, 429 US 97 (1976)	13, 14
Hicks v. Oklahoma,, 447 US 343, 100 S.Ct. 227, 65 L.Ed.2d 175 (1980)	15
Robinson v. California, 370 US 660, 82 S.Ct. 1470, 8 L.Ed.2d 758 (1962), reh.den., 371 US 905, 83 S.Ct. 202.	14
Vitek v. Jones, 445 US 480, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980)	17
Constitutional provisions:	
US Constitution, Amendment 8	13, 15
US Constitution, Amendment 5	15
US Constitution, Amendment 14	15

OPINIONS BELOW

The opinions below are reproduced in the appendix. Neither the district court opinion nor the court of appeals opinion has as yet been reported.

JURISDICTION

The opinion of the Court of Appeals was entered June 19, 1985. Appellant filed a Notice of Appeal to this Court with the Court of Appeals on September 17, 1985. This appeal is being docketed within 90 days of the opinion of the Court of Appeals. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES

United States Constitution,
Amendment 8:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

United States Constitution,

Amendment 14, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. §1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

STATEMENT OF THE CASE

This is a civil rights case brought under 42 USC §1983, wherein the plaintiff below, Michael Haas, alleges that he was deprived of rights guaranteed him under the United States Constitution when the defendants, acting under color of state law, coerced him into participating in undercover drug work while he was a prisoner of the State of Minnesota. Plaintiff was openly and obviously seriously ill with the disease of alcoholism. Defendants, knowing this, acted cruelly and with deliberate indifference to his serious illness in violation of the 8th Amendment's prohibition against cruel and unusual punishment. Defendants further so altered the terms of plaintiff's confinement as to deprive him of his liberty without due process of law.

The district court below ruled, on

motion for summary judgment, that plaintiff had no federal cause of action. The court of appeals affirmed this decision. The result of such a decision, depriving plaintiff of his day in court to prove the factual matters in question, is to deny alcoholics their rights guaranteed under the United States Constitution. This is an important question which deserves a hearing before this Court.

Appellant was sentenced, on November 5, 1981, to nine months for aggravated forgery, the last three months to be suspended if Appellant enrolled in a chemical dependency program. Defendant Sheriff Paul Moe told Appellant he would receive a maximum ten year sentence on a related charge if he did not cooperate and work as an undercover drug informant. Defendants removed Appellant from the Lyon County Jail on numerous occasions, falsifying jail records to conceal the

purpose of such removal, that purpose being participation in undercover drug transactions. Appellant was an alcoholic and drug addict. Appellant was required to use alcohol and marijuana in these transactions. Defendant Moe interfered with Appellant's treatment for alcoholism by visiting him several times at the treatment center and pressuring him to return to undercover drug work. Moe pressured Appellant after release to continue undercover drug work, and Appellant finally relented. As the result of defendants' interference with Appellant's treatment program, Appellant was caused to resume the use of drugs and, as a result, was sent to prison in 1982.

Michael Haas was an open and obvious alcoholic. Defendants knew this and knew that Appellant's sentence included provision for chemical dependency treatment. Michael Haas, because of his

incarceration at the time of the offer and because of his alcoholism disease, was unable to consent voluntarily and, in fact, did not consent voluntarily to the deal offered him by Sheriff Moe. No defendant ever sought permission from the sentencing judge to deviate from Appellant's sentence by releasing him for undercover drug activity, and such permission would not have been granted. Sheriff Moe's visits to Appellant at the treatment center caused Appellant serious emotional stress and in fact interfered with his treatment. Sheriff Moe again used the threat of a ten year sentence, knowing this to be untrue, to coerce Appellant's further cooperation in the undercover drug campaign after Appellant's release from treatment. Appellant would have had a substantially better chance to recover from his alcoholism disease if defendants had not involved him in this

undercover drug operation. As a result of defendants' actions, plaintiff suffered great fear and emotional distress which may remain with him for his entire life. Absent defendants' actions, Appellant had a substantial chance of recovery, and might have been able to avoid incarceration at Stillwater.

Federal jurisdiction was properly invoked below under 28 USC §1343 and 42 USC §1983.

SUBSTANTIAL NATURE OF THE QUESTIONS PRESENTED

The opinions below ignore the serious nature of Appellant's illness, and the deliberate interference with treatment by defendants. Given the nature of his illness and the fact that this took place while he was in custody, the actions of defendants below is shocking. Whether the prisoner is a diabetic or an alcoholic, he is entitled to be free from the unnecessary infliction of pain and intentional interference with treatment which occurred here. Estelle v. Gamble, 429 U.S. 97, 104-105 (1976). The court of appeals places total responsibility for treatment of this disease on the sick prisoner and absolves his jailers of their duties under the Eighth Amendment. Defendants, knowing that Appellant was an extremely sick alcoholic and knowing that his sentence

contemplated six months of sobriety before his entry into treatment, illegally smuggled marijuana into the jail, covertly removed Appellant from the jail, and illegally supplied him with alcohol and marijuana on those occasions. All this occurred pursuant to Appellant's coerced participation in these drug buys. Defendants exacerbated and manipulated Appellant's illness for their own ends. If the Eighth Amendment has any meaning for alcoholics, this conduct violates the Eighth Amendment.

This court has held that it is cruel and unusual punishment to imprison a person because he is addicted. Robinson v. California, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962), reh. den., 371 U.S. 905, 83 S.Ct. 202. This court has held that intentional interference with prescribed treatment is cruel and unusual punishment. Estelle v. Gamble, 429

U.S. 97, 104-105 (1976). The court of appeals ignored these decisions and essentially held that an alcoholic prisoner is not entitled to the protection of the Eighth Amendment.

Every citizen of this country has a right to his liberty. Such liberty interest may be curtailed and constrained, according to law, when that citizen is convicted of a crime. It is very clear, however, that those in charge of a prisoner do not have the right to alter the prisoner's sentence for their own uses and at their own pleasure. This liberty interest is protected by the 5th and 14th Amendments.

The lower court's holding was in fact rejected by the Supreme Court in Hicks v. Oklahoma, 447 U.S. 343, 100 S.Ct. 2227, 2229, 65 L.Ed.2d 175 (1980), where the court held that a criminal defendant has a "substantial and

legitimate expectation" that his deprivation of liberty will only be to the extent determined by law:

> Where, however, a State has provided for the imposition of criminal punishment in the discretion of the trial jury, it is not correct to say that the defendant's interest in the exercise of that discretion is merely a matter of state procedural law. The defendant in such a case has a substantial and legitimate expectation that he will be deprived of his liberty only to the extent determined by the jury in the exercise of its statutory discretion.
>
> [Citations omitted].

The State of Minnesota has determined that its judges may deprive its citizens of their liberty upon conviction of a crime. Once, as here, the judge has determined the extent of that liberty deprivation, the State has not granted Sheriffs the authority to further impinge on the prisoner's constitutional right to liberty by inflicting upon him a totally unanticipated form of punishment.

Plaintiff had a substantial and legitimate expectation that his deprivation of liberty would conform to Judge Wiltrout's sentence. Defendants' actions violated this liberty interest.

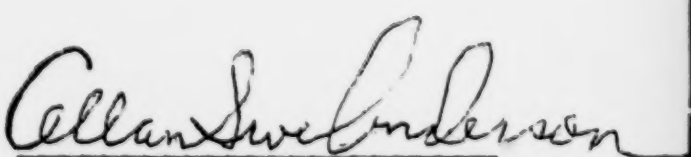
Plaintiff, like all prisoners, did not have a constitutional right to a particular sentence. However, once the judge had passed lawful sentence under the procedures established by Minnesota law, plaintiff had a constitutional right not to have his liberty curtailed beyond the sentence imposed. In Vitek v. Jones, 445 U.S. 480, 100 S.Ct. 1254, 1264, 63 L.Ed.2d 552 (1980), the court held that conviction of a crime does not give state employees the right to visit upon the prisoner consequences which are "qualitatively different from the punishment characteristically suffered by a person convicted of a crime." Undercover drug activity, like commitment

to a mental institution in Vitek, is a consequence qualitatively different from the punishment normally suffered by a person convicted of a crime. Plaintiff's conviction gave the State the right to confine him. That conviction, however, did not give these defendants the authority to alter his sentence to compel him to act as a drug informant. Given the danger of misuse and abuse of alcoholics and drug addicts under these circumstances, due process requires that the authorities obtain approval of the sentencing judge before so altering the terms of a prisoner's confinement.

CONCLUSION

The court of appeals ignored appellant's serious illness and misapplied or ignored decisions of this Court. The questions raised are substantial and of great importance to the humane treatment of alcoholic prisoners. This Court, accordingly, should grant this petition and issue the writ of certiorari to review the judgment of the Eighth Circuit Court of Appeals. In the event that the petition is granted, Petitioner prays that the judgment below be reversed and that the cause be remanded to the District Court for trial.

Respectfully submitted,



Allan Swen Anderson

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NO. 84-5185

Michael Gene Haas,

Appellant,

v.

Chet Weiner, individually, and as an Agent for Region "E" Drug Investigation Unit, and Region "E" Drug Investigation Unit, an Agent of all Counties in the State of Minnesota and the State of Minnesota, and The County of Redwood, and Sheriff Jerry Luttman, Sheriff of Redwood County and authorized Agent of Redwood County, and Lyon County, and Leon VanDenBroeke, individually, and as former Sheriff of Lyon County, and The County of Yellow Medicine, and Paul R. Moe, former Sheriff of Yellow Medicine County, as authorized agent of Yellow Medicine County, and Paul R. Moe, individually, and Martin Arimborgo as authorized agent of Lyon County, and individually, and John Doe and Richard Roe, authorized agents of all Counties of the State of Minnesota, County of Big Stone, County of Chippewa, County of Jackson, County of Kandiyohi,

On Appeal from the United States District Court for the District of Minnesota

Lincoln County, McLeod County,
Murray County, Nobles County,
and Swift County,

Appellees.

Submitted: June 12, 1985

Filed: June 19, 1985

Before LAY, Chief Judge, ARNOLD, Circuit Judge, and SACHS, District Judge.

PER CURIAM.

This is an action under 42 U.S.C. §1983 brought by Michael Gene Haas, who was a prisoner in the Lyon County, Minnesota, Jail at the time of the events giving rise to his claim. The defendants are Paul Moe, Sheriff of Yellow Medicine County, Minnesota, and others. The District Court[1] granted the defendants' motion for summary judgment, and we affirm.

The principal theory underlying the complaint is that certain actions of

Moe and other defendants inflicted cruel and unusual punishment on the plaintiff, in violation of the Eighth Amendment, made applicable to the states by the Due Process Clause of the Fourteenth Amendment. Plaintiff claims, in substance, that Moe approached him while he was in the Lyon County Jail and asked him to work as an undercover informant to set up drug deals between sellers and undercover law-enforcement agents. In exchange for this cooperation, it is alleged, Moe promised to get Haas a favorable sentence on pending aggravated forgery charges in Yellow Medicine County. Haas accepted this offer, cooperated with Moe in undercover activities, and received in exchange a five-year "stayed" sentence on the Yellow Medicine County charges. Haas alleged that the defendants allowed him to have marijuana and alcohol for his

use in the jail, that he also was required or at least permitted to use alcohol as part of his cover while working for defendants, and on occasion also smoked marijuana while working as a police agent. The alcohol and drugs were harmful to him, he alleges, because he is an alcoholic and a drug addict, which, it is claimed, Moe well knew. The alcohol and drugs thus consumed injured his health and interfered with his progress in a chemical-dependency treatment program in which he was enrolled during the final three months of his Lyon County sentence. Sheriff Moe, it is also alleged, pressured Haas while he was at the treatment program and finally succeeded in getting him to agree to do additional undercover police work.

We approach this case mindful that summary judgment is an extreme remedy, to be granted only if no genuine issue exists

as to any material fact. Applying this strict standard, we are nevertheless of the opinion that the District Court correctly held in defendants' favor. As the District Court observed, Haas has simply not alleged conduct sufficiently barbarous to constitute a violation of the Eighth Amendment. There is no substantial evidence that Haas's will was overborne, or that he was offered inducements that he did not have the power to resist if he chose. Indeed, he initially refused Moe's proposition, and later agreed to it only after consulting with counsel. He was not denied any needed medical treatment. He did in fact receive 58 days of chemical-dependency treatment as contemplated by the Lyon County sentence. His consumption of marijuana and alcohol while in the Lyon County Jail was admittedly voluntary, and conduct in which

one voluntarily engages can hardly be said to iolate the Eighth Amendment.

We do not mean in any way to condone the supplying of illegal drugs to prison inmates, or the falsification of prison records by state officials, which Haas also charges. The allegations of this complaint, if true, would be grounds for discipline of his jailers, and might also provide him with claims under state. Our action in affirming the District Court's dismissal of Haas's federal claims is without prejudice to his right to pursue any of these remedies.

Affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

* The Hon. Howard F. Sachs, United States District Judge for the Western District of Missouri, sitting by designation.

1 The Hon. Harry H. MacLaughlin, United States District Judge for the District of Minnesota.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Michael Gene Haas,

Plaintiff,

v.

Civil
No.
4-83-146

Chet Weiner, individually, and as an Agent for Region "E" Drug Investigation Unit, and Region "E" Drug Investigation Unit, an Agent of all Counties in the State of Minnesota, and The County of Redwood, and Sheriff Jerry Luttman, Sheriff of Redwood County and authorized Agent of Redwood County, and Lyon County, and Leon VanDenBroeke, individually, and as former Sheriff of Lyon County, and The County of Yellow Medicine, and Paul R. Moe, former Sheriff of Yellow Medicine County, as authorized agent of Yellow Medicine County, and Paul R. Moe, individually, and Martin Arimborgo as authorized agent of Lyon County, and Martin Arimborgo, individually, and County of Big Stone, and County of Chippewa and County of Jackson and County of Kandiyohi and Lincoln County and Mc Leod County and Murry County and Nobles County and Swift County and John Doe and Richard Roe, authorized agents of all Counties of the State of Minnesota,

MEMORANDUM
AND ORDER

Defendants.

This matter is before the Court on the motion of the defendants for summary judgment. The plaintiff's federal claims are based on 42 U.S.C. § 1983.[1] For the reasons that follow, the Court concludes the plaintiff has failed to state a valid cause of action under section 1983.

FACTS

The plaintiff Michael Haas claims that, while incarcerated in Lyon County, Minnesota, he was coerced into serving as an undercover drug informant and suffered considerable damage as a result. Since this is a motion for summary judgment, the Court will view the facts in the light most favorable to the plaintiff.

On November 5, 1981, Haas, who has

a lengthy criminal history,[2] was sentenced by Lyon County Judge Irving Wiltrout to a term of nine months for aggravated forgery. The first three months of the sentence were to be served without benefit of work release, the second three months permitted work release, and the final three months were to be suspended provided Haas enrolled in a chemical dependency program.

On or about November 10, 1981, the Sheriff of Yellow Medicine County, defendant Paul Moe, visited Haas at the Lyon County jail. Moe told Haas he understood that Haas had a lot of information about drug activity in Yellow Medicine County and asked Haas to work as an undercover informant to set up drug deals between sellers and undercover law enforcement agents. In exchange for Haas' cooperation, Moe promised to get Haas a

"sweetheart plea bargain" on pending aggravated forgery charges in Yellow Medicine County -- charges that carried a ten-year maximum sentence. Moe told Haas he would likely receive the maximum sentence if he did not cooperate. Judge Wiltrout was not consulted about the proposed deal.

Haas initially refused to participate. However, after thinking it over and consulting with his court-appointed lawyer George Harrelson who had no objection to the proposal, Haas agreed to Moe's deal. Haas pled guilty to the Yellow Medicine County charges, received a five-year stayed sentence, and was placed on probation. Thus, Moe kept his part of the bargain and Haas served no time beyond his none-month Lyon County Sentence. Haas testified he was "thankful" for Moe's intervention.

Testimony of Michael Gene Haas, Jan. 20, 1983, at 26.

Haas was taken out of the Lyon County jail on at least five occasions in the company of Lyon County Deputy Sheriff Martin Arimborgo to participate in undercover drug transactions in Lyon County and in other counties, and was paid $25 per transaction. Haas alleges the defendants falsified official records to make it appear that Haas was absent from the jail for court appearances. While on drug buys, Haas, who claims he is an alcoholic and a drug addict, was required or at least permitted to use alcohol as part of his cover, and on occasion smoked marijuana. Haas also alleges the defendants permitted him to have marijuana and alcohol for his use in the jail, permitted him to have sex with his girlfriend Karen Seaton at her apartment

after drug buys, and permitted him to sneak Seaton into the jail and have sex with her in the kitchen. Haas claims these liberties had a detrimental effect on his physical and emo ional well being.

Finally, Haas claims that, while he was enrolled in a chemical dependency treatment program at Willmar, Minnesota, during the final three months of his Lyon County sentence, Sheriff Moe visited him several times and tried to get him to abandon the treatment and return to doing more undercover work. Haas refused, but Moe continued to pressure him even after he had been released. Haas finally relented and made two more undercover buys for payments of $100 each. Haas claims Moe's pressure interfered with his drug treatment program, caused him to resume using drugs, and thereby contributed to his current confinement at Stillwater

Prison for the crime of aiding the commission of burglary to which he pled guilty in December of 1982.

Haas alleges the defendants' actions constituted the following constitutional violations:

1) involuntary servitude in violation of the thirteenth amendment;

2) cruel and unusual punishment in violation of the eighth amendment;

3) denial of effective assistance of counsel in violation of the sixth amendment; and

4) deprivation of the "right to a sentence" in violation of the fifth and fourteenth amendments.

Haas also alleges several state law causes of action. He seeks $6 million in compensatory damages, $6 million in punitive damages, and an order releasing him from his confinement at Stillwater

Prison.

DISCUSSION

A defendant is not entitled to summary judgment unless the defendant can show that no genuine issue exists as to any material fact. Fed. R. Civ. P. 56(c). Summary judgment is an extreme remedy that should not be granted unless the moving party has established a right to judgment with such clarity as to leave no room for doubt and unless the non-moving party is not entitled to recovery under any discernible circumstances. E.g., Vette Co. v. Aetna Casualty & Surety Co., 612 F.2d 1076, 1077 (8th Cir. 1980). In considering a summary judgment motion, a court must view the facts most favorably to the nonmoving party and give that party the benefit of all reasonable inferences that can be drawn from the facts.

Unlaub Co. v. Sexton, 568 F.2d 72, 76 (8th Cir. 1977). The nonmoving party may not merely rest upon the allegations or denials of the party's pleading, but must set forth specific facts by affidavits or otherwise showing that there is a genuine issue for trial. Burst v. Adolph Coors Co., 650 F.2d 930, 932 (8th Cir. 1981). Finally, as this is an action against government officials performing discretionary functions, the plaintiff must show that the defendants violated "clearly established statutory or constitutional rights of which a reasonable person would have known." Harlo v. Fitzgerald, 457 U.S. 800, 818 (1982).

1. Involuntary Servitude

Haas' first claim, that he was coerced into working for the defendants in violation of the thirteenth amendment's

proscription on involuntary servitude, fails to state a cause of action. Compelling prison inmates to work does not violate the thirteenth amendment. E.g., Mosby v. Mabry, 697 F.2d 213, 215 (8th Cir. 1982) (per curiam). More importantly, there is no evidence of undue coercion in this case. Moe simply offered Haas an opportunity to do undercover work in exchange for a light sentence. There is no evidence Moe lied to Haas about the maximum penalty Haas faced on the pending Yellow Medicine County charges, which was in fact ten years.

Moe may have overstated the likelihood that Haas would receive the maximum penalty, but Haas was certainly sophisticated enough to make his own assessment of the risks involved given his considerable experience with the criminal justice system.[3] See note 2 supra;

Deposition of George I. Harrelson, Sept. 13, 1983, at 28 (Haas had a "good working knowledge of the [Minnesota] sentencing guidelines"); see also Deposition of Michael Gene Haas, July 14, 1983, at 43-44. Furthermore, Haas had the opportunity to consult with his attorney, Harrelson, about the deal, although he was apparently not completely candid with Harrelson.[4] Harrelson did not advise against the deal. Under these circumstances Haas' knowing and voluntary consent to work for Moe in exchange for a light sentence does not violate the thirteenth amendment. Boyington v. State, 389 So.2d 485, 488 (Miss. 1980).

2. Cruel and Unusual Punishment

Haas next claims the defendants conduct in supplying him with alcohol and marijuana, knowing that he was dependent

on those substances, constituted cruel and unusual punishment in violation of the eighth amendment. Haas relies on the line of cases holding that "deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain'... proscribed by the Eighth Amendment." Estelle v. Gamble, 429 U.S. 97, 104-05 (1976), quoting Gregg v. Georgia, 428 U.S. 153, 182-83 (1976).

Haas' eighth amendment claim fails because he has not alleged sufficiently barbarous conduct on the part of the defendants. The eighth amendment is reserved for cases of extreme cruelty such as where prison officials deny an inmate a needed operation, e.g., Freeman v. Lockhart, 503 F.2d 1016, 1017-18 (8th Cir. 1974), or deny access to obviously needed medication, e.g., Westlake v. Lucas

537 F.2d 857, 860 (6th Cir. 1976).

Here, Haas was not denied any needed medical treatment. He did receive 58 days of chemical dependency treatment at Willmar as contemplated by Judge Wiltrout's sentence. Haas' claim that his allegedly forced consumption of alcohol and marijuana while on drug buys amounted to the "unnecessary and wanton infliction of pain," is belied by his conduct. Haas admits he voluntarily smoked marijuana and consumed alcohol while in the Lyon County jail, Deposition of Michael Gene Haas, July 14, 1983, at 39-40, and continued to smoke marijuana covertly even after enrolling in the Willmar chemical dependency program, Deposition of Michael Gene Haas, Nov. 14, 1983, at 80. Conduct in which voluntarily engages can hardly be said to violate the eighth amendment.[5] It is also significant that Haas never

complained to his attorney about his treatment during the entire period of his incarceration. Deposition of Michael Gene Haas, July 14, 1983, at 72-73.

Haas also alleges the sexual liberties he was allowed violated the eighth amendment and invaded his privacy rights. These allegations are frivolous. Haas admits he voluntarily requested and arranged the sexual liasons. Deposition of Michael Gene Haas, Nov. 14, 1983, at 115-16. There is no evidence any third party observed these encounters.

3. Denial of Effective Assistance of Counsel

Haas claims the defendants violated his sixth amendment right to effective assistance of counsel by falsely telling his attorney Harrelson that Haas would not be "kept on a string" and would have to participate in only two drug buys.

This conduct allegedly prevented Harrelson from being able to properly advise Haas.

Haas' sixth amendment claim must be dismissed. Even assuming the defendants misled Harrelson, by his own admission Haas himself lied to Harrelson about the terms of Moe's proposed plea bargain so that Harrelson would not try to talk him out of the deal. Deposition of Michael Gene Haas, July 14, 1983, at 37; but see Deposition of Michael Gene Haas, November 14, 1983, at 49 (Haas did not lie to Harrelson). It also appears that Haas had already participated in more than two drug buys at the time he pleaded guilty to the Yellow Medicine County charges; thus, any deception on Moe's part was revealed before the plea bargain was consummated. At no time did Haas complain to Harrelson that he was being overused as a drug informant. Under these

circumstances, the defendants' alleged interference with Haas' attorney-client relationship with Harrelson does not state a claim under the sixth amendment.

4. Due Process Violations

Haas alleges he was deprived of his "right to a sentence" without due process of law. Haas claims he had a right, created by Judge Wiltrout's sentence, to spend six months in the Lyon County Jail sober and away from drugs. The defendants allegedly deprived him of this "right" by employing him as an undercover informant, and in doing so also violated Minn. Stat. § 387.11 which states that "[t]he sheriff shall have the charge and custody of the county jail and receive and safely keep therein all persons lawfully committed thereto and not release any person therefrom unless discharged by due course of law."

Haas' due process claim fails because Haas has failed to demonstrate a protectable liberty interest in the terms of his sentence. Prison officials are afforded broad discretion in the administration of prisons. Hewitt v. Helms, 103 S.Ct. 864, 869 (1983). Thus, for example, a prisoner has no protectable interest in confinement to a particular institution, Olim v. Wakinekona, 103 S.Ct. 1741, 1745 (1983), or in retention of a particular prison job, Gibson v. McEvers, 631 F.2d 95, 98 (7th Cir. 1980).

Similarly, Haas had no protectable interest in being confined to his cell for the duration of his sentence. Minn. Stat. § 641.07 allows prisoners to be put to hard labor outside the prison walls, and nothing in Judge Wiltrout's sentence prohibited outside labor in this case.

Judge Wiltrout did order that Haas not receive the benefit of work release during the first three months of his sentence, but that provision of the sentence was not violated since Haas was never released; he was always in the custody of a sheriff or deputy sheriff. For the same reason, Minn. Stat. §387.11, quoted above, was not violated because Haas was not released from custody until the expiration of his lawful sentence. While it is true that Moe did not ask Judge Wiltrout's permission before seeking to employ Haas, Haas has provded no authority that Judge Wiltrout's permission was required. In his deposition, the Judge himself implied that it was not. Deposition of Irving J. Wiltrout, September 13, 1983, at 13 ("When I sentence someone to [the sheriff's custody], I'm through with him; that's about the only way I can answer that.").

Even if Haas had a protectable interest in being kept in his cell for six months, Haas has not shown that that interest was infringed without due process of law. Haas had the opportunity to consult with an attorney prior to agreeing to work undercover. In addition, although Judge Wiltrout was not consulted, the sentencing judge in Yellow Medicine County was aware of Haas' cooperation and approved the plea bargain. Accordingly, the Court finds no merit in Haas' claim he was deprived of the "right to a sentence" without due process of law.

Haas also claims Moe coerced him into resuming work as an undercover agent after his release from prison by threatening to send him back to prison. But these allegations are contradicted by Haas' own testimony. On questioning by his own lawyer, Haas testified in a

deposition that he went back to work for Moe because Moe told him that Karen Seaton, Haas' girlfriend, would be asked to work undercover if Haas refused the job. Testimony of Michael Gene Haas, January 20, 1983, at 13. The Court sees nothing unduly coercive about Moe's statements. In another deposition, Haas testified that he continued to make drug buys at $100 per buy because he wanted money to buy alcohol. Deposition of Michael Gene Haas, November 14, 1983, at 69-70. Again, there was no undue coercion on the part of any of the defendants.

Finally, Haas has alleged several state law claims. The Court does not pass on the merits of these claims since they are not cognizable in federal court absent a valid federal claim.

Based on the foregoing, IT IS ORDERED that the defendants' motions for

summary judgment are granted and the plaintiff's federal claims (counts one through four of the amended complaint) are dismissed with prejudice.

IT IS FURTHER ORDERED that the plaintiff's state law claims (counts five through seven of the amended complaint) are dismissed without prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY.

(Signed)
Judge Harry H. MacLaughlin
United States District Court

DATED: July 30, 1984

[1] The plaintiff has also invoked 42 U.S.C. § 1981 and 42 U.S.C. § 1985. Neither of these statutes is applicable as this case does not involve allegations of racial or other class-based invidious discriminati on. See, e.g., Griffin v. Breckenridge, 403 U.S. 88, 102 (1971).

[2] Since 1973, Haas has been convicted of at least 12 crimes ranging from assault to aggravated forgery. Deposition of Michael Gene Haas, July 14, 1983, at 6-12.

[3] Haas also does not appear to be a weak-willed individual who is easily manipulated. His own former attorney, now a judge, describes him as "the type of person that takes advantage of other people, people don't take advantage of him... a consummate con artist... he could sell sand to the Arabs." Deposition of George I. Harrelson, Sept. 13, 1983, at 39-40.

[4] Haas testified in his first deposition that he lied to Harrelson and told him that Moe had not made any promises. According to his testimony, Haas lied because he did not want Harrelson to "try to talk me out of doing it...." Deposition of Michael Gene Haas, July 14, 1983, at 37. In a later deposition, Haas changed his story and testified that he did tell Harrelson about Moe's promise. Deposition of Michael Gene Haas, Nov. 14, 1983, at 48-49.

In any event, it is clear that Harrelson knew that Haas had been offered the opportunity to work undercover and did not object to the idea. Harrelson did recommend to Moe that Haas not be "kept on

a string." Deposition of George I. Harrelson, Sept. 13, 1983, at 15, but he placed no specific limit on the number of buys in which Haas could become involved, id. at 14-15.

[5] The Court in no way condones the supplying of illegal drugs to prison inmates. Haas' allegations, if true, would be grounds for severe discipline of Haas' jailers, but the conduct complained of simply does not rise to the level of an eighth amendment violation.

(2)

No.85-577

Supreme Court, U.S.
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CLERK

In The Supreme Court of the United States

October Term, 1985

MICHAEL GENE HAAS,

Petitioner,

vs.

CHET WEINER,
THE COUNTY OF REDWOOD,
JERRY LUTTMAN,
LYON COUNTY,
LEON VAN DEN BROEKE,
THE COUNTY OF YELLOW MEDICINE,
PAUL R. MOE,
and
MARTIN ARIMBORGO,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

CERTIFICATE OF SERVICE

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QUESTIONS PRESENTED

I. WHETHER RESPONDENTS' CONDUCT IN SUPPLYING THE PETITIONER WITH ALCOHOL AND MARIJUANA, KNOWING HE WAS CHEMICALLY DEPENDENT, CONSTITUTED CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AMENDMENT?

II. WHETHER PETITIONER HAD A PROTECTABLE LIBERTY INTEREST IN THE TERMS OF HIS COURT ORDERED SENTENCE WHICH WAS INFRINGED WITHOUT DUE PROCESS OF LAW?

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Contents	ii
Table of Authorities	iii
Statement of the Case	1
Summary of Argument	3
Argument	4
Conclusion	6

TABLE OF AUTHORITIES

Cases:	**Page**
Burnside v. Frey, 563 F. Supp. 1344 (D.C.Mo. 1983)	5
Estelle vs. Gamble, 429 U.S. 97 (1976)	4
Freeman vs. Lockhardt, 503 F.2d 1016 (8th Cir. 1974)	4
Gibson vs. McEvers, 631 F.2d 97 (7th Cir. 1980)	5
Hewitt vsw. Helms, 103 S.Ct. 864 (1983)	5
Olim v. Wakinekona, 103 S.Ct. 174 (1983)	5
Westlake vs. Lucas, 537 F.2d 857 (6th Cir. 1976)	4
Statutes:	
Minnesota Statute Section 641.07 (1983)	5

STATEMENT OF THE CASE

Following discussion with counsel for all respondents in this matter, it was agreed that the following brief in opposition to the Petition for Writ of Certiorari, be submitted on behalf of all respondents.

This matter is before the Court on the petitioner's Petition for a Writ of Certiorari following the Eighth Circuit Court of Appeals' affirmance of the District Court's granting of Summary Judgment in favor of all defendants. The District Court, Judge Harry MacLaughlin presiding, ruled that petitioner had no federal cause of action, dismissed petitioner's federal claims with prejudice, and dismissed petitioner's state law claims without prejudice. The Eighth Circuit Court of Appeals, Judges Lay, Arnold, and Sachs, presiding, affirmed Judge MacLaughlin's Order in all respects.

The petitioner Michael Haas has a long criminal history, having been convicted of at least 12 crimes since 1973, ranging from assault to aggravated forgery. On November 5, 1981, Haas, was sentenced in Lyon County to a term of nine months for aggravated forgery. Haas claims that while incarcerated in Lyon County, he was coerced into serving as an undercover drug informant and suffered considerable damage as a result.

At the time of his sentencing in November 1981, Haas was approached by Yellow Medicine County Sheriff Paul Moe, and they discussed charges pending against Haas in Yellow Medicine County. Sheriff Moe told Haas that he could be sentenced to ten years in prison for the charges of aggravated forgery pending against him there, but that if Haas agreed to act as an undercover drug informant for him, he would get a "sweetheart plea bargain" for Haas on the pending charges in Yellow Medicine County. Prior to accepting Sheriff Moe's proposal, Haas consulted with his attorney, George Harrelson. Although two versions of this conversation with Harrelson exist, in both, Harrelson told Haas that he had no objection to Haas working as an undercover agent, and that it was up to Haas to decide whether he should cooperate with Sheriff Moe.

On November 27, 1981, after consulting with his attorney, and after approximately one month of sobriety, Haas accepted Sheriff Moe's offer, and cooperated with him in undercover drug activities. In return, Haas received a five-year "stayed" sentence on the Yellow Medicine County charges. Thus, Haas served no time beyond his nine month Lyon County sentence, and Sheriff Moe kept his part of the bargain.

Haas, a self-admitted alcoholic and drug addict, alleges that he was required or at least permitted to use alcohol as part of his cover while working undercover, and on occasion smoked marijuana, even when it was not in connection with buying drugs. Haas claims that these activities had a detrimental effect on his physical and emotional well-being.

After five months in the Lyon County Jail, Haas took advantage of an option to complete a three month treatment program at Willmar State Hospital in lieu of serving the last one and one-half months of his jail term. On March 21, 1982, Haas went to Willmar for treatment and stayed 58 days. It is alleged that Sheriff Moe pressured Haas while he was at the treatment program and finally succeeded in getting Haas to agree to additional undercover police work. Haas claims that this conduct interfered with his ability to concentrate on his drug rehabilitation treatment. On June 18, 1982, eighteen days following his release from treatment at Willmar, Haas aided in the commission of a burglary. He plead guilty to that crime in December 1982. The present action ensued.

SUMMARY OF ARGUMENT

I. The conduct of respondents was not so barbarous as to give rise to a violation of the Eighth Amendment. Haas received treatment for his chemical dependency, and his consumption of alcohol or marijuana was voluntary.

II. A prisoner has no protectable liberty interest in the terms of his sentence. Even if Haas had a liberty interest in the terms of his Lyon County sentence, this interest was not infringed without due process since he consulted with his attorney prior to agreeing to act as an informant and the sentencing judge approved of the plea bargain.

ARGUMENT

I. RESPONDENTS' CONDUCT IN SUPPLYING THE PETITIONER WITH ALCOHOL AND MARIJUANA, KNOWING HE WAS CHEMICALLY DEPENDENT, DID NOT CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AMENDMENT.

Assuming that all of petitioner's claims regarding his use of alcohol and marijuana while working as an undercover agent are true, these claims alleged do not show sufficiently barbarous conduct on the part of respondents to rise to the level of a constitutional violation. See *Estelle v. Gamble,* 429 U.S. 97 (1976), *Freeman v. Lockhardt,* 503 F.2nd 1016 (8th Cir. 1974); *Westlake v. Lucas,* 537 F.2nd 857 (6th Cir. 1976).

These cases make clear that the invocation of the Eighth Amendment protection is reserved for cases of extreme cruelty and deliberate indifference to the serious medical needs of prisoners. Here, Haas was not denied any needed medical treatment, since he received 58 days of treatment at a treatment center for chemical abuse in Willmar, Minnesota pursuant to his sentence in Lyon County. In addition, there is no substantial evidence that Haas' will was overborne in his agreement to act as an undercover agent. After initially refusing Sheriff Moe's offer, Haas accepted only after consulting with his attorney. His consumption of marijuana and alcohol while in the Lyon County Jail was admittedly voluntary, and conduct in which one voluntarily engages cannot be said to violate the Eighth Amendment.

II. PETITIONER DID NOT HAVE A PROTECTABLE LIBERTY INTEREST IN THE TERMS OF HIS COURT ORDERED SENTENCE WHICH WAS INFRINGED WITHOUT DUE PROCESS OF LAW.

Haas contends that he had a liberty interest in his Court ordered sentence which was violated when respondents offered him the chance to become an informant. This claim must fail due to the lack of the protectable liberty interest in the terms of a prisoner's sentence.

Prison officials have broad discretion in the administration of prisons. *Hewitt v. Helms,* 103 Sup. Ct. 864 (1983). The Constitution does not secure to a prisoner the right to be confined or to remain at any particular jail; *Olim v. Wakinekona,* 103 S.Ct. 174 (1983); *Burnside v. Frey,* 563 F. Supp. 1344 (D.C.Mo. 1983); or the retention of a particular prison job. *Gibson v. McEvers,* 631 F.2nd 95 (7th Cir. 1980).

Similarly, Haas had no protectable liberty interest in being confined to a cell for the duration of his sentence. Haas was never released from custody during his undercover activities since he was always in the custody of a sheriff or deputy sheriff. Minnesota Statutes Section 641.07 allows prisoners to be put to hard labor outside prison walls and nothing in Haas' original sentence prohibited this. There is no authority that the original sentencing judge's permission was required before the undercover activity could take place.

Even assuming that Haas had a protectable interest in being kept in his cell during his sentence, there is no showing that this interest was infringed without due process of law. Haas had the opportunity to consult with an attorney prior to agreeing to work undercover. The sentencing judge in Yellow Medicine County was aware of Haas' cooperation and approved the plea bargain involving the undercover activity. Therefore, there is no merit in Haas' claim that he was removed from jail in violation of the terms of his sentence without due process of law.

CONCLUSION

The facts herein do not in any way support the position of petitioner that he has been subjected to cruel and unusual punishment, or a deprivation of due process. In the absence of any constitutional violation, the Federal Courts are an inappropriate forum, and the Civil Rights Act is an inappropriate vehicle, for the redress sought by petitioner. The present Petition for Writ of Certiorari before this Court is frivolous and does not in any way present special or important reasons for review of this matter by this Court. The decisions of the District Court and the Eighth Circuit Court of Appeals reached below are entirely consistent with the decisions of this Court and other Federal courts, and do not present a basis for review by this Court. Therefore, respondents respectfully request this Court to exercise its discretion and deny in all respects the present Petition.

Respectfully submitted,

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Gary J. Gordon

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Julie A. Williams